

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 148 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KODARBHAI ZAVERBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
MR YATIN SONI for Respondent No. 2, 3, 4, 5, 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. This revision is directed against the order dated January 22, 1999 of the Judicial Magistrate, Anand, dismissing the complaint of the revisionist filed under sec.302 read with sec.114 of the Indian Penal Code.

2. Shri AM Parekh, learned counsel appears for the revisionist and Shri MA Bukhari, learned APP for the State/respondent no.1. None appeared for the respondent nos.2 to 6 though the list has been revised four times. As such, learned counsel for the revisionist and learned APP Shri MA Bukhari have been heard and the impugned order has been examined.

3. The impugned order can not be sustained in the eyes of law. There is no provision in the Code of Criminal Procedure under which a Magistrate could have dismissed a complaint in which the offence was exclusively triable by the Court of Session. For this, the various provisions of the Code of Criminal Procedure have to be mentioned.

3. The first relevant provision is proviso to sec.202(2) of the Code of Criminal Procedure which provides that,

'If it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his evidence and examine them on oath.'

This exercise was done by the learned Magistrate. The learned counsel for the revisionist informs that he had examined all the witnesses before the learned Magistrate, who were required to be examined for the purposes of this proviso.

4. It seems that the learned Magistrate has acted under sec.203 of the Code of Criminal Procedure for dismissing the complaint but, this provision is not attracted when the offence complained of is exclusively triable by the Court of Session. The jurisdiction of the learned Magistrate to dismiss the complaint under sec.203 of the Code of Criminal Procedure could be exercised in cases which are not exclusively triable by the Court of Session. To be more specific, if there are more sections than one, and even if, one of the sections of the Indian Penal Code is exclusively triable by the Court of Session then private complaint instituted by the complainant could not be dismissed under sec.203 of the Code of Criminal Procedure.

5. The next provision is sec.204 of the Code of Criminal Procedure which provides for issue of process. The next relevant stage is sec.208 of the Code of

Criminal Procedure which provides that, 'where in a case instituted otherwise; than, on a police report, if it appears to the Magistrate issuing process under sec.204 of the Code that the offence is triable exclusively by the Court of Session, the Magistrate shall, without delay, furnish to the accused, free of cost, a copy of each of the documents mentioned thereunder.

6. The next stage is under sec.209 of the Code of Criminal Procedure which provides for committal of the accused to the Court of Session, when it appears to the Magistrate that the offence is exclusively triable by the Court of Session.

7. In none of these provisions the legislature has empowered a Magistrate to sift or weigh the evidence lead by the complainant, in cases exclusively triable by the Court of Session, and to dismiss the complaint on the ground that no prima facie case exists against the accused. If this is the scheme for committal of cases to the Court of Session instituted on private complaint then, the Magistrate committed grave jurisdictional error in dismissing the complaint on the ground that no prima facie case against the accused is made out. This exercise is to be undertaken by the Session Judge when the case is committed to him.

8. Shri AM Parekh has also brought to my notice that, FIR was also lodged and police investigation commenced. Feeling dissatisfied with the investigation, he approached this Court for change of investigation but, before the petition could be finally disposed of by this Court the investigation was already changed. Consequently, his petition was dismissed as infructuous. He further informs that the the Investigating Agency completed the investigation and submitted charge sheet against one accused only. He also informed that, that accused has expired. Consequently, power under sec.210 of the Code of Criminal Procedure can not be exercised by the Magistrate now. The only option to the Magistrate is to commit the case to the Court of Session by following the procedure prescribed under secs.204 and 208 of the Code of Criminal Procedure. Shri Parekh has stated that, he does not want to examine any other witness before the learned Magistrate as is required under the proviso to sec.202(2) of the Code of Criminal Procedure.

9. In view of the above discussion, it is obvious that the impugned order is wholly illegal, hence it can not be sustained. Revision has, therefore, to be allowed and is hereby allowed. The impugned order is hereby set

aside. The Inquiry Case No.117/97 is remanded to the Judicial Magistrate, Anand with direction to commit the case to the Court of Session, in the light of observations made in the body of this Judgment.

OCTOBER 12, 2000. [D.C. SRIVASTAVA, J.]

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